

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 5, 2002

Agenda ID #1331

TO: PARTIES OF RECORD IN APPLICATION 97-05-019

This is the draft decision of Administrative Law Judge (ALJ) Cooke. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>.

Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN for
Carol Brown, Interim Chief
Administrative Law Judge

CAB:sid

Attachment

Decision **DRAFT DECISION OF ALJ COOKE** (Mailed 11/5/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SFPP, L.P., for Approval to Issue Promissory Notes in an Aggregate Principal Amount Not to Exceed \$20 Million, and to Secure Such Notes Under Existing Mortgages or Other Encumbrances of Utility Property.

Application 97-05-019
(Filed May 9, 1997)

O P I N I O N

1. Summary

The petition to modify Decision (D.) 98-10-022 is denied.

2. Background

D.98-10-022 granted Santa Fe Partners, L.P. (SFPP) authority to issue promissory notes and use the proceeds to construct new pipeline facilities to transport liquid petroleum products. D.98-10-022 certified the Final Environmental Impact Report (EIR) for the project. The decision was final on November 13, 1998, because no applications for rehearing of D.98-10-022 were filed.

The ABC Unified School District (District) filed a petition to modify D.98-10-022 (Petition) on March 10, 1999, and concurrently sought a temporary restraining order to prohibit SFPP from constructing new pipeline facilities along the route approved in D.98-10-022. The Petition is essentially an application for rehearing in that it requests that the Commission select a different route for the pipeline facilities than adopted in D.98-10-022 and argues that the Final EIR is legally insufficient.

On March 12, 1999, Assigned Commissioner Bilas issued a ruling denying the request for the temporary restraining order but granting a temporary stay of construction until March 16, 1999, to allow SFPP and the District to engage in settlement discussions. The ruling contains an extensive discussion of the substantive issues raised by the Petition and lays out in detail the public notice efforts engaged in by the Commission. On the merits, the ruling found that the District was unlikely to prevail on the merits of its claim that the Final EIR was legally insufficient and thus the request for a temporary restraining order was denied. On March 15, 1999, SFPP filed its support of the Assigned Commissioner's Ruling.

Since that time, no additional activity has occurred in this case. Construction of the project was complete in May 1999 and the project is operational.

3. Discussion

The Petition is procedurally improper on its face under the Public Utilities Code, the Commission's Rules of Practice and Procedure and the California Environmental Quality Act (CEQA), and should be rejected. Specifically, the Petition raised issues of legal sufficiency and legal error related to the Final EIR, which would properly deem the request an application for rehearing as opposed to a petition for modification. Pub. Util. Code § 1731(b) and Rule 85 provide that an application for rehearing must be filed within 30 days of the date when the Commission issues a decision. D.98-10-022 was issued on November 13, 1998, and the Petition was filed on March 10, 1999. Because the Petition was filed more than 30 days after the decision was issued, it must be rejected.

Similarly, CEQA requires that an action alleging that a public agency improperly determined whether a project may have a significant effect on the

environment must commence within 30 days from the date of the filing of a Notice of Determination (NOD). (Public Resources Code Section 21167(b), CEQA Guidelines Section 15112(c)(1).) The record in this case demonstrates that the Commission filed the NOD with the State Clearinghouse on October 26, 1998. Thus, because the Petition was filed more than 30 days after the NOD was filed, it must be rejected as failing to meet the CEQA Statute of Limitations requirements.

Finally, we have reviewed the Assigned Commissioner's Ruling of March 12, 1999, and agree that the Commission's public notice efforts generally, and specifically with respect to the District, met the requirements of CEQA. Thus, the request to revisit the appropriate route for the pipeline project on the basis of legal insufficiency of the Final EIR, should be rejected.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Michelle Cooke is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Issues of legal sufficiency and legal error related to the Final EIR should have been properly addressed in an application for rehearing.
2. The Commission's public notice efforts generally, and specifically with respect to the District, met the requirements of the California Environmental Quality Act.

Conclusions of Law

1. Because it was filed more than 30 days after D.98-10-022 was adopted, the Petition is procedurally improper on its face pursuant to Pub. Util. Code § 1731(b) and Rule 85, and should be rejected.

2. Because it was filed more than 30 days after the Notice of Determination was filed with the State Clearinghouse, the Petition is procedurally improper on its face pursuant to CEQA (PR Code Section 21167(b) and Guideline Section 15112(c)(1)), and should be rejected.

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision (D.) 98-10-022 is denied.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.